

(Rev. 01/21) Complaint for Violation of Civil Rights (Prisoner)

UNITED STATES DISTRICT COURT

for the

Western District of New York

23cv1162

Case No.

9:23-CV-1279

(to be filled in by the Clerk's Office)

Daniel J. Montulli

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

JURY TRIAL: Yes ☒ No ☐Kathy Hochul Gov.

Daniel F. Martuscello III Act. Commissioner
Mrs. Cook Superintendent of Orleans C.F.
John Doe Dep. of Security of Orleans C.F.

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)



COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

(Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

(Rev. 01/21) Complaint for Violation of Civil Rights (Prisoner)

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name

Daniel J. Montulli

All other names by which
you have been known:

ID Number

11B1552

Current Institution

ORleans Correctional Facility

Address

3531 Gaines Basin RoadAlbion

City

N.Y.

State

1441-9199

Zip Code

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name

Kathy HochulJob or Title (*if known*)Governor of N.Y.s

Shield Number

Employer

Address

City

State

Zip Code

☐

Individual capacity

☒

Official capacity

Defendant No. 2

Name

Daniel F. Martuscello IIIJob or Title (*if known*)Acting Commissioner

Shield Number

Employer

Address

City

State

Zip Code

☐

Individual capacity

☒

Official capacity

(Rev. 01/21) Complaint for Violation of Civil Rights (Prisoner)

Defendant No. 3

Name Mrs. Cook
 Job or Title (if known) Superintendent of Orleans C.F.
 Shield Number _____
 Employer Orleans Correctional Facility (DOCCS)
 Address 3531 Gaines Basin Road
Albion N.Y. 14411-9199
City State Zip Code
☐ Individual capacity ☒ Official capacity

Defendant No. 4

Name John Doe
 Job or Title (if known) Dep. of Security
 Shield Number _____
 Employer Orleans Correctional Facility (DOCCS)
 Address 3531 Gaines Basin Road
Albion N.Y. 14411-9199
City State Zip Code
☐ Individual capacity ☒ Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

- ☐ Federal officials (a *Bivens* claim)
☒ State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

Amendments 4th, 8th, 14th

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

(Rev. 01/21) Complaint for Violation of Civil Rights (Prisoner)

N/A

- D. Section 1983 allows defendants to be found liable only when they have acted “under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia.” 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

Negligence and deliberate indifference to facility maintenance and safety protocols and grossly insufficient medical treatment

III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (check all that apply):

- ☐ Pretrial detainee
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☒ Convicted and sentenced state prisoner
- ☐ Convicted and sentenced federal prisoner
- ☐ Other (explain) _____

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

N/A

- B. If the events giving rise to your claim arose in an institution, describe where and when they arose.

(OCF) walk ways May 13, 2022 At 12:00pm - 1:00pm

(Rev. 01/21) Complaint for Violation of Civil Rights (Prisoner)

C. What date and approximate time did the events giving rise to your claim(s) occur?

May 13th 2022 around 12:00 P.M. - 1:00 P.M.

D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)

Severed tendon, took a piece of Bone with it.
tendon cut me on the inside, Avulsion fracture and
a severe sprain from Rolling my ankle in a ditch
on the outer walk way. Christopher T. Sprague saw
all this occur.

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

Severed tendon, took a piece of Bone with it. Tendon cut me on the inside,
Avulsion fracture and a severe sprain from Rolling my ankle.
I will write on different paper of statement of Claim(s) (1 of 8 pgs)

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

I Daniel J. Montulli am seeking (\$10 million) including
filing and lawyer fee's for physical long term
damages, mental and emotional stress from
lack of medical treatment. Plus reimbursement
for copies and postage fees.

VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

☒ Yes

☐ No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

ORLEANS Correctional Facility

B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

☒ Yes

☐ No

☐ Do not know

C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

☒ Yes

☐ No

☐ Do not know

If yes, which claim(s)?

lacked of proper medical care due to deliberate indifference to facility maintenance and safety protocols. I suffered undue serious physical injury in the form of grossly insufficient medical treatment/care as outlined in DOCS Interdepartmental NO.: ORL-0199-22.

(Rev. 01/21) Complaint for Violation of Civil Rights (Prisoner)

D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

☒ Yes

☐ No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

☐ Yes

☒ No

E. If you did file a grievance:

1. Where did you file the grievance?

ORLEANS CORRECTIONAL FACILITY

2. What did you claim in your grievance?

RIGHT FOOT WENT INTO A DITCH ON OUTER EDGE OF WALKWAY, ~~REPP~~ CAUSING MY ANKLE TO ROLL CAUSING AN INJURY I REPORTED THE INJURY TO A C.O AT THE SCHOOL BLDING WENT FOR EMERGENCY SICKCALL SEEN BY STAFF NURSE NO DOCTOR WAS AVAILABLE LACK OF MEDICAL CARE, PAIN AND SUFFERING

3. What was the result, if any?

IT IS NOTED THAT FIRE AND SAFETY WAS ALSO NOTIFIED OF THE INCIDENT.

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.)

FILED GRIEVANCE APPEALED TO SUPERINTENDENT APPEALED TO ALBANY CENTRAL OFFICE REVIEW COMMITTEE PROPER CARE WAS DELAYED CAUSING PERMANENT DAMAGE AND PAIN OF INJURY WALKWAYS WAS NOT FULLY REPAIRED.

(Rev. 01/21) Complaint for Violation of Civil Rights (Prisoner)

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

N/A

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

N/A

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

VIII. Previous Lawsuits

The “three strikes rule” bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has “on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this “three strikes rule”?

☐ Yes

☒ No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

(Rev. 01/21) Complaint for Violation of Civil Rights (Prisoner)

A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

☐ Yes

☒ No

B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court *(if federal court, name the district; if state court, name the county and State)*

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition. _____

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

(Rev. 01/21) Complaint for Violation of Civil Rights (Prisoner)

IX. Certification and Closing

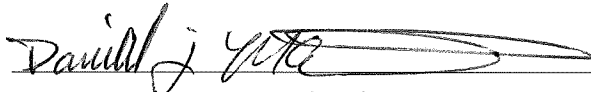
Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 02-21-2024

Signature of Plaintiff



Printed Name of Plaintiff

Daniel J. Montulli

Prison Identification #

11-B-1552

Prison Address

3531 Gaines Basin Road

Albion

City

NY

State

14411-9199

Zip Code

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Address

City

State

Zip Code

Telephone Number

E-mail Address

Print

Save As...

Add Attachment

Reset

Statement of Claim(s)

(I was given ankle support on May 13th, 2022)

On May 13th, 2022 at approximately 12:00pm-1:00pm while walking to the school building for an I.L.C. Call out, as I was walking I heard something behind me thinking maybe a C.O. was behind me I turned around but it was another I/I talking loud in another dorm. I was walking passed so as I turned around to continue to the I.L.C. meeting when my right foot fell into a ditch on the edge of the walkway and my foot rolled on the side causing me to stumble when I felt a snap/pop in my foot/ankle area followed by severe pain. So I continued to the school building with help upon entering the school building I then told the Orleans Correctional Facility (O.C.F.) Staff C.O. at the front desk what happened while walking and told the C.O. that I needed to go to emergency sick-call due to the fact I was in severe pain and needed medical assistance. I was told to go to my meeting and the C.O. said he would call the hospital. After the meeting the C.O. said it was okay to go to medical. I asked if I could get assistance to medical and the C.O. said no that I could walk. I was forced to walk/shuffle to Emergency Sick-call (E.S.C.) upon reaching the (Hospital) I was made to wait for about 30 minutes to see a (O.C.F.) Staff nurse, when I finally was seen I told the nurse what happened and what I felt and all the pain the nurse told me to take off my boot/sock to look at my injury, the nurse examined my foot/ankle and said it was just a sprain and I was given medication for the pain. Not known to my knowledge I was given Ibuprofen and it

Statement of Claim(s)

States in my file I have a heart condition and am prescribed (81 mg) of baby aspirin for the rest of my life and Ibuprofen and baby aspirin cancel each other out. An ice pack was given to me and was told that if my injury worsens to come back to sick-call because no doctor was available to examine my injury. I was then approached by an (O.C.F) staff Sargeant and the Sargeant asked what happened and where did the injury occur, the Sargeant then proceeded to take pictures of my foot/ankle and asked if I wanted protective custody I Replied no and signed the paperwork saying no. I Requested for a Cane and or crutches to aid me with walking around (O.C.F) and also stated how pain I was in and the nurse said no because there was no doctor available. I then said to the nurse I think I broke something in my foot/ankle but my pleas went unheard and was dismissed and I was told to Report back to my dorm per direct order (106.10) by staff. I went back to my dorm (G-1) in severe pain and missed dinner due to inability to walk any further, due to being in so much pain I Couldn't sleep properly and would constantly have shooting pains Running up my leg because of my injury. On May 14th, 2022 my foot/ankle was Swollen so I asked the dorm's C.O. to call medical for emergency treatment because I was experiencing excruciating pain and the nurse Replied to the C.O.'s call that the doctor was not available. I missed breakfast, lunch and dinner due to the pain I was enduring because of my injury. ON May 15th, 2022 I was awoken by the pain I was

Statement of Claim(s)

experiencing I then looked at my foot and realized there was bruise's and more swelling. I asked the dorm officer to make a phone call so that my food can be delivered to me I was told no, I also ask the officer to call medical due to increased pain, swelling and bruising medical answered and said no doctor was available and to put a sick call in that night to be seen in the morning. I put in the sick call that night to be seen the next morning.

On May 16th, 2022 I went to sick call that morning by having to walk on my injured foot/ankle I was seen by a nurse and I explained to the nurse what happened to my foot/ankle, I then showed the nurse my foot/ankle of the severe bruising and swelling and notifying the nurse of the excruciating pain I was experiencing. The nurse commented on how bad it looked and said the doctor was not available but I can still get an X-Ray done that day. After the X-Ray was done I asked the nurse if I can receive a walking cane and or crutches, but due to the fact of the doctor being unavailable I was denied the cane and crutches. I then asked the nurse for a medical excuse from work and programs also I requested for a feed-up tray to be delivered to my dorm(G-1) but was denied the feed-up tray and granted a two day medical excuse, also I received a medical pass to return back to the infirmary for 5/17/2022 at approximately 9:30 am to be seen by Dr. Fries. After I was seen by the nurse I begged one last time for a cane or crutches but

Statement of Claim(s)

my pleas went unrecognized and was told they can do nothing further for me and to Return back to my dorm (G-1) per direct order by (O.C.F) medical staff. I was forced to walk/limp/shuffle back to G-1 the farthest dorm on this Compound from medical enduring Severe, excruciating and overwhelming pain. When I got back to the dorm I asked the dorm officer if I can speak to a Sargeant and the C.O. said yes, when the Sargeant arrived to the dorm, I then showed the Sargeant my injury and explained how bad the pain was that I was feeling. The Sargeant asked me why I was not able to get a cane or crutches and I explained that the nurse said due to the fact the doctor was unavailable yet again. The Sargeant said they couldn't do anything to assist and to fill out another sick call form. I went to bed in a massive amount of pain and woke up the next morning in outstanding pain due to being forced to continue to walk on my foot/ankle injury because of medical neglect/indifference and malpractice. On May 17th, 2022 prior to going to sick call I asked the dorm C.O. if I can get assistance from another I/I but was denied and was forced to walk/limp/shuffle to sick call. I was seen by a nurse but the doctor was unavailable yet again, I then showed the nurse my injury on how it worsened by bruising and increased swelling and the pain became agonizingly unbearable I then requested walking assistance by walking cane or crutches and was denied again due to the doctor being unavailable again.

Statement of Claim(s)

Page 5 of 8

I was given a direct order (106.10) to Report back to my dorm (G-1) and to fill out another sick call to be seen the following day of 5/18/2022.

On May 18th, 2022 I asked the dorm officer if I can get help to medical I was told no and was forced to walk/limp/shuffle again on my injury to medical by myself. I was seen by the nurse and then finally by the doctor whose name is DR. Fries, who after a brief examination and of me explaining how the injury occurred and how I was feeling on the amount of pain I was dealing with DR. Fries recommended that I go to an outside hospital (E.C.M.C) Hospital, I was made to fully strip then completely shackled including being put in ankle restraints while being shackled I was forced to crawl into the transport van and out of the van upon arrival to E.C.M.C Hospital. when I was admitted into the hospital I was seen by E.C.M.C staff nurse and then the doctor. The doctor ordered an x-ray to be taken of my foot/ ankle and leg and once the doctor received the x-ray the doctor concluded that I had a severed tendon that took a piece of a bone from my foot and then explained to me when it happened it caused a whip lashed movement cutting me on the inside, as well I had a avulsion fracture and severe sprain. I then asked the doctor due to all the walking and proper medical procedure that I was neglected by (O.C.F) staff did it cause my injury to worsen. His professional opinion as a doctor was my injury severely worsened

Statement of Claim(s)

from forceful walking due to medical malpractice by ORLEANS Correctional facility medical staff. the doctor then gave me a walking shoe due to no CAM walking boot was available, so the doctor wrote a prescription for a CAM walking boot then handed the prescription to the C.O. who transported me. The doctor gave me proper medical assistance as well as instructions to make an appointment by ORLEANS Correctional facility staff for an orthopedic physician. upon leaving the E.C.M.C Hospital I was forced to crawl back into the transport van fully shackled and to crawl back out after arriving back to ORLEANS Correctional facility. I was cleared by (O.C.F) medical staff to keep the crutches the doctor gave me at E.C.M.C Hospital and the transportation C.O. gave all medical document's including the CAM boot prescription to O.C.F staff member / Nurse and the nurse told me that it would take one to two days for the prescription to be processed and delivered I was then given another medical excuse from work and programs for two weeks I wrote a sick call on may 25th 2022 and was seen on may 26th, 2022 and was seen by a nurse explaining that the pain increased and Requested information Regarding where my walking CAM boot was and why I have not Received it yet. The nurse then looked into my medical Records and said there was no prescription for a medical CAM walking boot. I explained there was a prescription filled out by

Statement of Claim(s) page 7 of 8

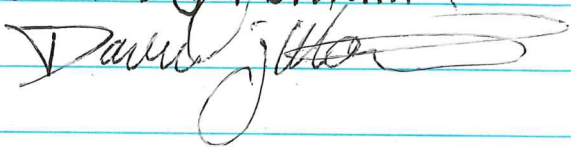
the E.C.M.C medical doctor and handed to the transportation C.O., then handed to the O.C.F nurse upon arriving back to Orleans Correctional facility. The nurse said they would look into it and for me to Return back to my dorm (G-1) and they will Respond via mail. I was Seen by ORTHOPEDIC on June 1st, 2022 where I was given a CAM walking boot at E.C.M.C Hospital. The ORTHOPEDIC doctor explained to me that because they took so long to make me an appointment that If I needed surgery at this point in time it would hurt me more than help me. I then explained to the ORTHOPEDIC doctor how my injury occurred, the pain I experienced as well as all the walking I was forced to do unaided so I asked for the ORTHOPEDIC'S professional opinion was my injury made worse due to being forced to walk on it and the ORTHOPEDIC doctor said yes.

ON May 26th I had put in a grievance requesting for a wheelchair because I was denied by Orleans Correctional facility medical staff members. In the month on June of 2022 I put in a sick call form for having swollen lymphoid under my left arm pit and was seen by medical staff and the nurse saw my swollen lymphoid and said it was caused by continued use of the crutches. Sometime in the month of June of 2022 I was finally given a wheelchair. I requested from 2022 to 2023 medical staff for physically therapy for my foot/ankle due to the fact of not

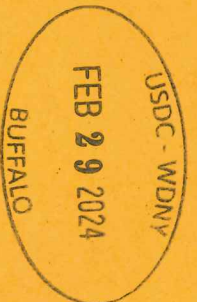
Statement of Claim(s) Page 8 of 8

being able to Jog, Run, Jump or do heavy lifting without causing Substantial pain. After a year of waiting I was finally granted access to Receive physical therapy.

11-B-1552

Daniel J Montulli


Daniel J. Montulli DIN # 1181552
ORLEANS CORRECTIONAL FACILITY
3531 GAINES BASIN ROAD
ALBION, NEW YORK 14411-9199



ORLEANS
CORRECTIONAL FACILITY



NEOPOST
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~~23-cv-1279~~ 23cv1162

Clerk, U.S. District Court
United States Courthouse
Buffalo, NY. 14202-3350

Legal Mail